IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 1189/2004

Date of decision 17.5.2007

Dhian Singh **…Petitioner.**

Versus

State of H.P. and others. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. Yes.*

For the petitioners : **Mr. B.P. Sharma, Sr. Advocate with Mr. Sandeep Sharma, Advocate**

For the respondents **Mr. M.S. Chandel, Adovcate General with Mr. M.A. Khan, and Ms. Meenakashi Sharma, Dy.As.G.**

Rajiv Sharma, J. (Oral)

Shorn of all the unnecessary details, the facts necessary for the adjudication of this petition are that the petitioner was served with a notice on 25.8.2003 by the Secretary (Panchayati Raj) calling upon him to file his reply within 20 days from the date of issuance of the notice, as to why he should not be suspended from the post of Vice President. The notice was issued to the petitioner under section 146 of the H.P. Panchayati Raj Act, 1994 (hereinafter referred to as the Act). In pursuance to the office order dated 25th August, 2003, the petitioner had filed detailed reply on 12.9.2003. The Secretary Panchayati Raj vide order dated 15th October, 2004 had removed the petitioner from the post of Up-Pradhan, Gram Panchayat, Kuddi, Development Block, Sadar,

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? Yes.

District Bilaspur, H.P. with immediate effect. The copy of the same is placed on record vide Annexure P-8.

I have heard the parties and perused the record.

Admittedly the petitioner has filed the reply to show cause notice on 12.9.2003. The reply filed by the petitioner was very exhaustive denying all the charges levelled against him. It was incumbent upon the Secretary (Panchayati Raj) to consider the reply filed by the petitioner to the show cause notice personally. The Secretary (Panchayati Raj) instead of applying his own mind on the reply furnished by the petitioner devised a new method of seeking comments on the reply filed by the petitioner from the office of District Panchayat Officer, Bilaspur. The District Panchayat Officer, Bilaspur submitted the comments on the reply filed by the petitioner dated 12.9.2003. The comments of the District Panchayat Officer were never disclosed to the petitioner. Surprisingly the Secretary (Panchayati Raj) had only taken into consideration the comments of the District Panchayat officer, Bilaspur and has not applied his own independent mind to the reply filed by the petitioner. The Secretary (Panchayati Raj) has made following comments:

> **"The comments of the D.P.O. Bilaspur, in respect of above reply was called for and as per comments received the reply under reference is irrelevant and un-warranted, because he has concealed material facts that he has spent Rs. 16378/- on the labour component on the basis of muster-roll, whereas the assessment made by the Asstt. Engineer (Dev.) comes to Rs. 3661/- only on the labour component. Thus it is clear that Sh. Dhian Singh misappropriated Rs. 12,717/- on the labour component during his tenure as Pradhan with malafide intention."**

This approach of the Secretary (Panchayati Raj) is in violation of the principles of natural justice. The petitioner had furnished the reply to the show cause notice and the same was to be considered in the right

perspective by the Secretary (Panchayati Raj). The procedure adopted by the Secretary (Panchayati Raj) calling upon the comments from District Panchayat Officer on the reply furnished by the petitioner was arbitrary and illegal. On the basis of the arbitrary procedure adopted by the Secretary (Panchayati Raj) the petitioner has been removed from the office of Up-Pradhan, Gram Panchayat Kuddi and he also ceased to be a member of any other Panchayat as per order 15th October, 2004. The petitioner has been visited with civil consequences and the orders have been passed without following the principles of natural justice. This court does not approve the procedure adopted by the secretary (Panchayati Raj) of calling the comments of District Panchayat Officer, Bilaspur and thereafter basing the same for passing the order dated 15.10.2004. The Secretary (Panchayati Raj) has not applied his own mind and the order dated 15.10.2004 stands vitiated being out come of irrelevant and extraneous considerations.

Accordingly this petition is allowed with costs which are quantified at Rs. 3,000/- . Resultantly the order dated 15.10.2004 is quashed and set aside.

(Rajiv Sharma), Judge

May 17, 2007
Awasthi